TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 516.

THE UNITED STATES, APPELLANTS,

vs.

HENRY SCHABEN.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 1, 1871.

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1 *Petition.—Filed Aug.* 14, 1868.

United States Court of Claims.—December term, A. D. 1868.

HENRY SCHABEN
vs. } 3408.
THE UNITED STATES.

To the honorable the judges of the Court of Claims:

The petition of Henry Schaben, a citizen of the United States, and a resident of Savannah, Georgia, showeth:

That, in the month of January, 1865, your petitioner was the owner and in possession of fifty-two bales of upland cotton, classed as good quality, and of the weight of twenty-three thousand four hundred pounds, then stored in the city of Savannah, Georgia.

That, in the said month of January, 1865, after the occupation of said city by the United States forces, your petitioner, in obedience to orders from the military authorities of the United States, then holding and governing said city, reported said cotton as his and in his possession; and afterwards, to wit, in the same month of January, all of said cotton was seized and taken possession of by Col. H. C. Ransom, A. Q. M., acting, as your petitioner is informed and believes, under the orders of the War Department, but without the consent of your petitioner, and against his will, and that no part of said cotton or the proceeds thereof was appropriated in any way to the use of the Army or Navy of the United States;

but that said cotton was turned over, by the officers seizing it, to
2 an agent of the Treasury Department, by whom it was sold, and the nett proceeds thereof paid into the Treasury of the United States.

Your petitioner avers that he is unable to state the precise amount for which said cotton was sold, or the expenses attending the seizure, shipment, transportation and sale, but he states, on information and belief, that the said cotton was sold by the agent of the Treasury Department, as follows, to wit, for fifty cents per pound, the aggregate of sale being eleven thousand seven hundred dollars, and the expenses thereof did not exceed five per cent., and the nett proceeds thereof, which have been paid into the Treasury of the United States, amount to eleven thousand one hundred and fifteen dollars.

Your petitioner further shows that said cotton had never been abandoned or forfeited, nor become liable to confiscation under any of the acts of Congress, in that behalf made and provided, and that it was not liable to seizure or capture under the laws of nations, nor under the laws or usages of war; and that no proceedings for the purpose of condemning said cotton have ever been instituted in any court or before any tribunal.

Your petitioner further shows that if there has been a valid and lawful capture of said cotton, which he understands is asserted by the United States, he is, nevertheless, entitled to receive the nett proceeds of it, amounting to the said sum of $11,115 00, as he verily believes, under the provisions of the act of Congress, approved March 12, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States."

Your petitioner further shows that he has never, in any way, voluntarily aided, abetted, or encouraged the late rebellion against the Government or authority of the United States.

COOLEY & CLARKE,
Sol'rs for Claimant.

Henry Schaben, being duly sworn, deposeth and saith that he is the claimant named in the foregoing petition, and that no assignment
3 or transfer of said claim, or any part thereof, or any interest therein has been made; that he is justly entitled to the amount therein claimed from the United States, after allowing all just claims and offsets; and that he believes the facts stated in said petition to be true.

HENRY SCHABEN.

Subscribed and sworn to before me this tenth day of August, A. D. 1868, at Savannah, Georgia.

JA'S McPHERSON,
Clerk U. S. Dist. Court, So. Dist. Ga.

P. O. address of claimant, Savannah, Ga.
P. O. address of counsel,
Cooley & Clarke, Washington, D. C.

4 In the United States Court of Claims. December term, A. D. 1868.

[Filed March 18, 1869.]

HENRY SCHABEN
vs.
THE UNITED STATES. } No. 3408.

And the said defendants, by their Attorney General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strick proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of $11,115 00, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea to the said petition the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and described in the Court of Claims, as provided by the 3d section of the act of Congress, approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea to the said petition the said defendants say

that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant, at the time of the filing of his said petition, was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents therein set forth, were made and done in the administration of, and in virtue and under color of, the act of Congress, entitled "An act for the collection of abandoned & captured property, and for the prevention of frauds in insurrectionary districts within the United States," approved March 12, 1863.

Whereby and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the Government, and for the better defence of the Treasury against unlawful claims," approved July 27, 1868, the claimant is barred of his said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney General.

5 United States Court of Claims.

HENRY SCHABEN
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THE UNITED STATES. } No. 3408.

Replication.

1. And now comes the claimant, by his solicitors, and, for replication to the first plea of the defendant, herein pleaded, says that he denies that the said claimant did not, within two years after the suppression of the rebellion, prefer his claim to the proceeds of the property mentioned and described in said petition in the Court of Claims, as provided by the 3d section of the act of Congress, approved March 12, 1863, entitled "An act to provide for the collection of abandoned property," &c., as alleged in the said defendant's plea. And this he prays may be inquired of by the court.

Whereas the said claimant prays judgment.

COOLEY & CLARKE,
Sol's for Claimant.

Filed M'ch 19, 1869.

6 2. And, for replication to the second plea of the said defendant, herein pleaded, this claimant says that he denies that the said claimant, at the time of filing his said petition herein, was an alien, or that the said seizure and taking possession of the said property named in said petition, and the said several acts and doings of the defendants, their officers, servants, and agents, therein set forth, were made and done in the administration of, and in virtue and under color of, the act of Congress entitled

as alleged in the said plea. And this he prays may be enquired of by the court.

COOLEY & CLARKE,
Sol's for Claimant.

7 In the Court of Claims.

HENRY SCHABEN
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THE UNITED STATES.

And now, to wit, eleventh of April, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Henry Schaben, claimant, have and recover of and from the United States the sum of seven thousand eight hundred & eighty-nine dollars eighty-five cents, ($7,889 85.)

By the court.

A true copy of record.

8 In the Court of Claims. Dec. term, 1869.

HENRY SCHABEN
vs. } 3408.
THE UNITED STATES.

To the Court of Claims:

The defendants hereby make application for the allowance of an appeal to the Supreme Court of the United States from the judgment rendered in this action, on the 11th April, 1870, in favor of the claimant for the sum of $7,889 85.

May 26, 1870.

ROB'T S. HALE,
Special Counsel of Treasury Dep't.
THOMAS H. TALBOT,
Ass't Att'y Gen'l.

Filed in clerk's office, May 27, 1870.

AT CHAMBERS, *May* 28, 1870.

Ordered, that the appeal as prayed in case of Henry Schaben vs. The United States, 3408, be allowed.

JOSEPH CASEY,
Chief Justice.

9 Court of Claims.

HENRY SCHABEN
vs. } 3408.
THE UNITED STATES.

Findings of fact and conclusions of law.

This case having been heard before the chief justice and judges of the Court of Claims at the City of Washington, on the eleventh day of April, 1870, the court, after due deliberation upon the proofs and evidence given at the trial, does hereby, at the time of rendering judgment, find the following facts:

10 Henry Schaben, by his petition, describes himself as a citizen of the United States, and a resident of Savannah, Georgia; and claims by it that he was, in the month of January, 1865, the owner of fifty-two bales of upland cotton, then stored in said city of Savannah;

that, in said month of January the said cotton was taken from him by the military authorities of the United States, and converted into money, which money is now in the Treasury of the defendant.

We find the facts as follows:

1st. Claimant was a naturalized citizen of the United States, made so by the superior court of the State of New York, on the 4th day of June, A. D. 1855.

2nd. That he was the owner of forty-five bales of upland cotton
11 in Savannah, at the time of the capture of that city by the forces of the United States, which forces took from him the said cotton, and caused the same to be sold, and that the proceeds thereof are now in the Treasury of the United States.

3rd. That the said claimant has never, in any way, voluntarily aided, abetted, or encouraged the late rebellion against the Government or authority of the United States.

Applying these facts to the act of Congress, approved 12th of March, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," the Court of Claims decided that the said Henry Schaben should recover the sum of seven thousand eight hun-
12 dred eighty-nine dollars and eighty-five cents, being the net proceeds of his forty-five bales of cotton, now in the Treasury of the United States, and that should be recorded in his favor for that amount.

By the court.

13 In the Court of Claims.

HENRY SCHABEN
vs.
THE UNITED STATES. } No. 3408.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for the defendants, for the allowance of an appeal, as filed in the clerk's office, May 27, 1870, and of the order of the chief justice of said court, allowing the same; of the finding of facts and the conclusions of law on said facts on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this first day of March, 1871.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 516. The United States, appellants, vs. Henry Schaben. Court of Claims. Filed 1st March, 1871.

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